

DOCKET FILE COPY ORIGINAL



CHAIRMAN

Federal Communications Commission

Washington, D.C.

August 20, 2003

17-278

17-278

2 11 2003

The Honorable Herb Kohl  
United States Senate  
330 Hart Senate Office Building  
Washington, D C 20510

Dear Senator Kohl

Thank you for your August 1, 2003, letter expressing concerns regarding how the national do-not-call registry will interact with state telemarketing laws, particularly when the state law provides stronger protections than the Commission's rules

The Commission released a *Report and Order* on July 3, 2003, amending its rules on telemarketing under the Telephone Consumer Protection Act ("TCPA"). In that *Order*, the Commission noted that "[t]he states have a long history of regulating telemarketing practices, and we believe that it is critical to combine the resources and expertise of the state and federal governments to ensure compliance with the national do-not-call rules." As a result, the Commission declined to preempt state use of their own do-not-call databases, or prohibit states from enforcing state regulations that are consistent with the TCPA rules. In addition, the TCPA specifically prohibits the preemption of any state law that imposes more restrictive intrastate requirements.

Thus, as you note in your correspondence, the Commission stated its intention to consider any alleged conflicts between state and federal requirements and the need for preemption on a case-by-case basis. However, the Commission also noted that nothing in the *Order* prohibits states from enforcing in state court, state regulations that are consistent with the TCPA and the Commission's rules.

I appreciate both your support for the federal do-not-call list and its rules and regulations, and the leadership demonstrated by the State of Wisconsin in enacting its state telemarketing laws. We have placed a copy of your correspondence in the public record for this proceeding. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael K. Powell", written over a large, stylized oval flourish.

Michael K. Powell

Received 2  
17-278



CHAIRMAN

Federal Communications Commission

Washington, D C.

August 20, 2003

12-478

The Honorable Russell D Feingold  
United States Senate  
506 Hart Senate Office Building  
Washington, D C 20515

Dear Senator Feingold

Thank you for your August 1, 2003, letter expressing concerns regarding how the national do-not-call registry will interact with state telemarketing laws, particularly when the state law provides stronger protections than the Commission's rules

The Commission released a *Report and Order* on July 3, 2003, amending its rules on telemarketing under the Telephone Consumer Protection Act ("TCPA") In that *Order*, the Commission noted that "[t]he states have a long history of regulating telemarketing practices, and we believe that it is critical to combine the resources and expertise of the state and federal governments to ensure compliance with the national do-not-call rules " As a result, the Commission declined to preempt state use of their own do-not-call databases, or prohibit states from enforcing state regulations that are consistent with the TCPA rules In addition, the TCPA specifically prohibits the preemption of any state law that imposes more restrictive intrastate requirements

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Sincerely,

Michael K. Powell



Federal Communications Commission

Washington, D.C.  
August 20, 2003

7-2575

The Honorable Tammy Baldwin  
U S House of Representatives  
1022 Longworth House Office Building  
Washington, D C 20515

Dear Congresswoman Baldwin

Thank you for your August 1, 2003, letter expressing concerns regarding how the national do-not-call registry will interact with state telemarketing laws, particularly when the state law provides stronger protections than the Commission's rules

The Commission released a *Report and Order* on July 3, 2003, amending its rules on telemarketing under the Telephone Consumer Protection Act ("TCPA"). In that *Order*, the Commission noted that "[t]he states have a long history of regulating telemarketing practices, and we believe that it is critical to combine the resources and expertise of the state and federal governments to ensure compliance with the national do-not-call rules." As a result, the Commission declined to preempt state use of their own do-not-call databases, or prohibit states from enforcing state regulations that are consistent with the TCPA rules. In addition, the TCPA specifically prohibits the preemption of any state law that imposes more restrictive intrastate requirements.

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Sincerely,

Michael K. Powell

# Congress of the United States

Washington, DC 20515

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August 1, 2003

Michael Powell  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Dear Chairman Powell:

We are pleased that the Federal Communications Commission recently issued its Order to create a national "do-not-call" registry as required by the Do-Not-Call Implementation Act (P.L. 108-010). We believe that this action is long overdue, and we applaud your efforts to harmonize the FCC's initiative with the Federal Trade Commission's "do-not-call" list. All Americans should be afforded the opportunity to block the majority of telemarketing calls by simply placing their phone numbers on a national "do-not-call" list. We note that this initiative has been overwhelmingly popular, with more than 26 million people placing their phone numbers on the FTC's list since the registry opened in late June.


That said, we seek clarification regarding how the FCC "do-not-call" registry in tandem with the FTC's list, will interact with state telemarketing laws. As you know, several states have also responded to the annoyances of telemarketing by establishing statewide "do-not-call" lists. Wisconsin has a tough do-not-call list that has enjoyed widespread popularity with our constituents. We are concerned that the federal list – which we wholeheartedly support – may undermine Wisconsin law that regulates *interstate* telemarketing calls. Specifically, the Wisconsin does not allow for an "existing business relationship" exception permitted under the federal rule. Understandably, state government officials in Wisconsin are concerned that their tougher state law will be superseded by federal regulatory action.

The June 26, 2003 Order announcing the FCC's "do-not-call" registry stated: "We will consider any alleged conflicts between state and federal requirements and the need for preemption on a case-by-case basis. Accordingly, any party that believes a state law is inconsistent with section 227 of our rules may seek a declaratory ruling from the Commission." We respectfully urge that if the Commission is asked to make this determination with respect to the Wisconsin law that it preserve Wisconsin's stronger protections with respect to interstate calls to the greatest extent possible.

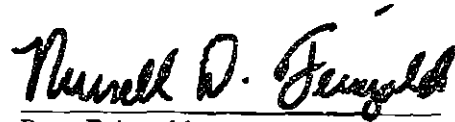
*CCB  
Policy-Telemarketing  
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2256*

We look forward to working with you further on this issue. Please do not  
hesitate to consult with us should you need further information on the Wisconsin law.

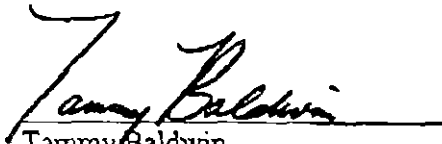
Sincerely yours,



Herb Kohl  
United States Senator



Russ Feingold  
United States Senator



Tammy Baldwin  
Member of Congress



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NO 657 P 1

DATE 8/1/03

TO Paul Jackson

PHONE \_\_\_\_\_

FAX 202-418-2806

FROM Subcommittee



SENATOR HERB KOHL  
SENATE JUDICIARY COMMITTEE  
SUBCOMMITTEE ON ANTITRUST,  
COMPETITION POLICY, and CONSUMER RIGHTS  
308 SENATE HART OFFICE BUILDING  
PHONE: 202/224.3406  
FAX: 202/228.2294

TOTAL PAGES (including cover) 3

REMARKS \_\_\_\_\_  
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